

29 October 2013

Addressee

Sent by email to members of the ESMA PTSC

Re: Challenges for EMIR Reporting

Dear []

We welcome the opportunity to provide you with some insight into industry preparation for implementation of the reporting obligation under EMIR.

ISDA and its members recognise the importance of reporting and the prudential oversight benefits it brings to the markets and users at large, and views as a key part of its mission, encouraging its members towards full compliance, and assisting in any way possible therein. We acknowledge and welcome the efforts of ESMA and National Competent Authorities (“NCAs”) in providing direction and clarification to the industry through formal Q&As and direct interaction over recent months. However, as firms continue their preparations for implementing reporting, there continue to be a number of challenges, more fully described in Appendix 1 attached hereto, that remain outstanding. We would like to draw your attention to these in the interests of openness and transparency and a desire to facilitate a safe and efficient transition to new regulatory environment with minimal impact on market operations.

You may also be aware that earlier this year ISDA and several other trade associations wrote a letter (copy attached) to ESMA expressing concern with a reporting start date that would apply to the industry as a whole, i.e. all asset classes and all firms with reporting obligations to commence reporting on the same date. Many of our concerns in this regard remain, in particular given the challenges outlined in the letter. However, we recognise the limited flexibility that is available to ESMA and NCAs alike and commit to continue working with the authorities to implement reporting safely and efficiently.

We note that some of these challenges require further guidance from ESMA and in this regard are referenced within this letter for purposes of awareness and to advise NCAs that, absent such guidance from ESMA, firms will follow the approach described herein in order to meet their reporting obligations. Indeed in some instances industry preparations are significantly advanced, with User Acceptance Testing under way or expected to begin soon, such that firms are unable to deviate from the approach described herein for initial go-live. However, ISDA and its members are of course committed to continue working with NCAs to deliver a compliant solution in the shortest possible time following clarification of requirements.

As regards the other challenges described in Appendix 1, we would note that some require clarification from NCAs. However, for the majority, firms recognise that there will be inconsistencies with the regulatory technical standards and implementing technical standards for the start of reporting and would like to highlight these inconsistencies. Where possible, a roadmap to resolve these issues is being suggested. We would appreciate the opportunity to engage with you in order to discuss and develop these solutions to achieve the objectives of EMIR in the most efficient manner, whilst reducing the risk of inaccurate and incomplete data that will require a significant amount of effort on the part of both market participants and authorities to analyse and correct.

We highlight below a couple of points that we would like to draw to your attention in particular, and which are giving rise to implementation challenges for the industry:

1. ESMA endorsement of UTI and UPI: While the attached Appendix identifies several UTI-related issues, we would also draw attention to more fundamental concerns around construct. We are aware that this and the issue related to endorsing the ISDA Taxonomy as UPI are still under discussion between ESMA and NCAs. However, we would like to highlight that many industry participants, who have reporting obligations in other jurisdictions, are leveraging existing processes to facilitate their compliance with EMIR reporting. For many industry participants, it will be very challenging to deviate from existing processes for initial reporting under EMIR given the significant amount of time required to design, build and implement alternative processes both across the market and within individual firms. We would encourage NCAs to assist ESMA in providing guidance to the industry in this regard. ISDA also remains available to assist in the discussion and to explain the industry perspective that we believe should be considered in order for the scale of these challenges to be appreciated in full.
2. We would also like to draw your attention to a cross-sectoral trade association initiative to analyse and assist the industry to find solutions for delegated reporting. While this topic is not described in depth in this letter, we attach a copy of a document that was recently shared with ESMA. The document highlights a number of implementation challenges related to delegated reporting. We would note that this work has involved a limited number of trade associations to date. We are in the process of increasing the participation of trade associations representing different sectors of the market and different jurisdictions.

As mentioned previously, we would welcome the opportunity to discuss with you in greater detail, these and future challenges as they are identified. To the extent that it is possible to meet with you as a group, including ESMA, we would very much appreciate that opportunity.

We remain at your disposal should you have any further questions and look forward to hearing from you.

Yours sincerely,

George Handjinicolaou
Deputy CEO and Head of ISDA Europe, Middle East and Africa

Since 1985, ISDA has worked to make the global over-the-counter (OTC) derivatives markets safer and more efficient. Today, ISDA has over 800 member institutions from 60 countries. These members include a broad range of OTC derivatives market participants including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure including exchanges, clearinghouses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's web site: www.isda.org.